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Louisville Ladder Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CESAR U. MORENO
CASTELLANOS, a/k/a CESAR
MORENO, an Individual,

Plaintiff,

vs.

LOUISVILLE LADDER INC.,
and DOES 1 to 25, Inclusive,

Defendants.

CASE No. C 08-02009-BZ MMC

**STIPULATED PROTECTIVE
ORDER**

COMPLAINT FILED: March 21, 2008
Trial Date: July 13, 2009

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

1 The parties acknowledge that this Order does not confer blanket protections on all
 2 disclosures or responses to discovery and that the protection it affords extends only
 3 to the limited information or items that are entitled under the applicable legal
 4 principles to treatment as confidential. The parties further acknowledge, as set
 5 forth in Section 10, below, that this Stipulated Protective Order creates no
 6 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
 7 forth the procedures that must be followed and reflects the standards that will be
 8 applied when a party seeks permission from the court to file material under seal.

9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors,
 11 employees, consultants, retained experts, and outside counsel (and their support
 12 staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless
 14 of the medium or manner generated, stored, or maintained (including, among other
 15 things, testimony, transcripts, or tangible things) that are produced or generated in
 16 disclosures or responses to discovery in this matter.

17 2.3 "Confidential" Information or Items: information (regardless of how
 18 generated, stored or maintained) or tangible things that qualify for protection under
 19 standards developed under F.R.Civ.P. 26(c).

20 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:
 21 extremely sensitive "Confidential Information or Items" whose disclosure to
 22 another Party or nonparty would create a substantial risk of serious injury that could
 23 not be avoided by less restrictive means.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery
 25 Material from a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or
 27 Discovery Material in this action.

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1 2.7. Designating Party: a Party or non-party that designates information or
2 items that it produces in disclosures or in responses to discovery as “Confidential”
3 or “Highly Confidential — Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is
5 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

6 2.9 Outside Counsel: attorneys who are not employees of a Party but who
7 are retained to represent or advise a Party in this action.

8 2.10 House Counsel: attorneys who are employees of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
10 well as their support staffs).

11 2.12 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as
13 an expert witness or as a consultant in this action. This definition includes a
14 professional jury or trial consultant retained in connection with this litigation.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
17 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
18 and their employees and subcontractors.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only
21 Protected Material (as defined above), but also any information copied or extracted
22 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
23 testimony, conversations, or presentations by parties or counsel to or in court or in
24 other settings that might reveal Protected Material.

25 4. DURATION

26 Even after the termination of this litigation, the confidentiality obligations
27 imposed by this Order s hall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or non-party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. A Designating Party must take care to
6 designate for protection only those parts of material, documents, items, or oral or
7 written communications that qualify – so that other portions of the material,
8 documents, items, documents, items, or communications for which protection is not
9 warranted are not swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified, or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or retard the case development process, or
13 to impose unnecessary expenses and burdens on other parties), expose the
14 Designating Party to sanctions.

15 If it comes to a Party's or a non-party's attention that information or items
16 that it designated for protection do not qualify for protection at all, or do not qualify
17 for the level of protection initially asserted, that Party or non-party must promptly
18 notify all other parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
21 stipulated or ordered, material that qualifies for protection under this Order must be
22 clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (apart from transcripts of
25 depositions or other pretrial or trial proceedings), that the Producing Party affix the
26 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY" at the bottom of each page that contains protected material. If only
28 a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins) and must specify, for each portion, the level
3 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

5 A Party or non-party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party
7 has indicated which material it would like copied and produced. During the
8 inspection and before the designation, all of the material made available for
9 inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
10 ONLY." After the inspecting Party has identified the documents it wants copied
11 and produced, the Producing Party must determine which documents, or portions
12 thereof, qualify for protection under this Order, then, before producing the specified
13 documents, the Producing Party must affix the appropriate legend
14 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY") at the bottom of each page that contains Protected Material. If only a
16 portion or portions of the material on a page qualifies for protection, the Producing
17 Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins) and must specify, for each portion, the level
19 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,
22 that the Party or non-party offering or sponsoring the testimony identify on the
23 record, before the close of the deposition, hearing, or other proceeding, all protected
24 testimony, and further specify any portions of the testimony that qualify as
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." When it is
26 impractical to identify separately each portion of testimony that is entitled to
27 protection, and when it appears that substantial portions of the testimony may
28 qualify for protection, the Party or non-party that sponsors, offers, or gives the

1 testimony may invoke on the record (before the deposition or proceeding is
 2 concluded) a right to have up to 20 days to identify the specific portions of the
 3 testimony as to which protection is sought and to specify the level of protection
 4 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 5 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
 6 appropriately designated for protection within the 20 days shall be covered by the
 7 provisions of this Stipulated Protective Order.

8 Transcript pages containing Protected Material must be separately bound by
 9 the court reporter, who must affix to the top of each such page the legend
 10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 11 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness
 12 or presenting the testimony.

13 (c) for information produced in some form other than documentary, and for
 14 any other tangible items, that the Producing Party affix in a prominent place on the
 15 exterior of the container or containers in which the information or item is stored the
 16 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 17 EYES ONLY.” If only portions of the information or item warrant protection, the
 18 Producing Party, to the extent practicable, shall identify the protected portions,
 19 specifying whether they qualify as “Confidential” or as “Highly Confidential –
 20 Attorneys’ Eyes Only.”

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 22 failure to designate qualified information or items as “Confidential” or “Highly
 23 Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the
 24 Designating Party’s right to secure protection under this Order for such material. If
 25 material is appropriately designated as “Confidential” or “Highly Confidential –
 26 Attorneys’ Eyes Only” after the material was initially produced, the Receiving
 27 Party, on timely notification of the designation, must make reasonable efforts to
 28 assure that the material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
3 Party's confidentiality designation is necessary to avoid foreseeable substantial
4 unfairness, unnecessary economic burdens, or a later significant disruption or delay
5 of the litigation, a Party does not waive its right to challenge a confidentiality
6 designation by electing not to mount a challenge promptly after the original
7 designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party's confidentiality designation must do so in good faith and must
10 begin the process by conferring directly (in voice to voice dialogue; other forms of
11 communication are not sufficient) with counsel for the Designating Party. In
12 conferring, the challenging Party must explain the basis for its belief that the
13 confidentiality designation was not proper and must give the Designating Party an
14 opportunity to review the designated material, to reconsider the circumstances, and,
15 if no change in designation is offered, to explain the basis for the chosen
16 designation. A challenging Party may proceed to the next stage of the challenge
17 process only if it has engaged in this meet and confer process first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a
19 confidentiality designation after considering the justification offered by the
20 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
21 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
22 material and sets forth in detail the basis for the challenge. Each such motion must
23 be accompanied by a competent declaration that affirms that the movant has
24 complied with the meet and confer requirements imposed in the preceding
25 paragraph and that sets forth with specificity the justification for the confidentiality
26 designation that was given by the Designating Party in the meet and confer
27 dialogue.

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1 The burden of persuasion in any such challenge proceeding shall be on the
 2 Designating Party. Until the court rules on the challenge, all parties shall continue
 3 to afford the material in question the level of protection to which it is entitled under
 4 the Producing Party's designation.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 7 disclosed or produced by another Party or by a non-party in connection with this
 8 case only for prosecuting, defending, or attempting to settle this litigation. Such
 9 Protected Material may be disclosed only to the categories of persons and under the
 10 conditions described in this Order. When the litigation has been terminated, a
 11 Receiving Party must comply with the provisions of section 11, below (FINAL
 12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
 14 location and in a secure manner that ensures that access is limited to the persons
 15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 17 otherwise ordered by the court or permitted in writing by the Designating Party, a
 18 Receiving Party may disclose any information or item designated
 19 CONFIDENTIAL only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 21 employees of said Counsel to whom it is reasonably necessary to disclose the
 22 information for this litigation and who have signed the "Agreement to Be Bound by
 23 Protective Order" that is attached hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the
 25 Receiving Party to whom disclosure is reasonably necessary for this litigation and
 26 who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

27 (c) experts (as defined in this Order) of the Receiving Party to whom
 28 disclosure is reasonably necessary for this litigation and who have signed the

1 “Agreement to Be Bound by Protective Order” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters, their staffs, and professional vendors to whom disclosure
4 is reasonably necessary for this litigation and who have signed the “Agreement to
5 Be Bound by Protective Order” (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Agreement to Be Bound by
8 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
9 exhibits to depositions that reveal Protected Material must be separately bound by
10 the court reporter and may not be disclosed to anyone except as permitted under
11 this Stipulated Protective Order.

12 (g) the author of the document or the original source of the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
15 in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” only to:

18 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
19 employees of said Counsel to whom it is reasonably necessary to disclose the
20 information for this litigation and who have signed the “Agreement to Be Bound by
21 Protective Order” that is attached hereto as Exhibit A;

22 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
23 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by
24 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in
25 paragraph 7.4, below, have been followed;

26 (c) the Court and its personnel;

27 (d) court reporters, their staffs, and professional vendors to whom disclosure
28 is reasonably necessary for this litigation and who have signed the “Agreement to

1 Be Bound by Protective Order” (Exhibit A); and

2 (e) the author of the document or the original source of the information.

3 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL
 4 – ATTORNEYS’ EYES ONLY” Information or Items to “Experts.”

5 (a) Unless otherwise ordered by the court or agreed in writing by the
 6 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this
 7 Order) any information or item that has been designated “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a written
 9 request to the Designating Party that (1) identifies the specific HIGHLY
 10 CONFIDENTIAL information that the Receiving Party seeks permission to
 11 disclose to the Expert, (2) sets forth the full name of the Expert and the city and
 12 state of his or her primary residence, (3) attaches a copy of the Expert’s current
 13 resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or
 14 entity from whom the Expert has received compensation for work in his or her
 15 areas of expertise or to whom the expert has provided professional services at any
 16 time during the preceding five years, and (6) identifies (by name and number of the
 17 case, filing date, and location of court) any litigation in connection with which the
 18 Expert has provided any professional services during the preceding five years.

19 (b) A Party that makes a request and provides the information specified in the
 20 preceding paragraph may disclose the subject Protected Material to the identified
 21 Expert unless, within seven court days of delivering the request, the Party receives a
 22 written objection from the Designating Party. Any such objection must set forth in
 23 detail the grounds on which it is based.

24 (c) A Party that receives a timely written objection must meet and confer
 25 with the Designating Party (through direct voice to voice dialogue) to try to resolve
 26 the matter by agreement. If no agreement is reached, the Party seeking to make the
 27 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
 28 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the

1 court to do so. Any such motion must describe the circumstances with specificity,
 2 set forth in detail the reasons for which the disclosure to the Expert is reasonably
 3 necessary, assess the risk of harm that the disclosure would entail and suggest any
 4 additional means that might be used to reduce that risk. In addition, any such
 5 motion must be accompanied by a competent declaration in which the movant
 6 describes the parties' efforts to resolve the matter by agreement (i.e., the extent and
 7 the content of the meet and confer discussions) and sets forth the reasons advanced
 8 by the Designating Party for its refusal to approve the disclosure.

9 In any such proceeding the Party opposing disclosure to the Expert shall bear
 10 the burden of proving that the risk of harm that the disclosure would entail (under
 11 the safeguards proposed) outweighs the Receiving Party's need to disclose the
 12 Protected Material to its Expert.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
 14 PRODUCED IN OTHER LITIGATION

15 If a Receiving Party is served with a subpoena or an order issued in other
 16 litigation that would compel disclosure of any information or items designated in
 17 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 18 ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating
 19 Party, in writing (by fax, if possible) immediately and in no event more than three
 20 court days after receiving the subpoena or order. Such notification must include a
 21 copy of the subpoena or court order.

22 The Receiving Party also must immediately inform in writing the Party who
 23 caused the subpoena or order to issue in the other litigation that some or all the
 24 material covered by the subpoena or order is the subject of this Protective Order. In
 25 addition, the Receiving Party must deliver a copy of this Stipulated Protective
 26 Order promptly to the Party in the other action that caused the subpoena or order to
 27 issue.

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1 The purpose of imposing these duties is to alert the interested parties to the
 2 existence of this Protective Order and to afford the Designating Party in this case an
 3 opportunity to try to protect its confidentiality interests in the court from which the
 4 subpoena or order issued. The Designating Party shall bear the burdens and the
 5 expenses of seeking protection in that court of its confidential material – and
 6 nothing in these provisions should be construed as authorizing or encouraging a
 7 Receiving Party in this action to disobey a lawful directive from another court.

8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 10 Protected Material to any person or in any circumstance not authorized under this
 11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 12 writing the Designating Party of the unauthorized disclosures, (b) use its best
 13 efforts to retrieve all copies of the Protected Material, (c) inform the person or
 14 persons to whom unauthorized disclosures were made of all the terms of this Order,
 15 and (d) request such person or persons to execute the “Acknowledgment and
 16 Agreement to Be Bound” that is attached hereto as Exhibit A.

17 10. FILING PROTECTED MATERIAL. Without written permission from
 18 the Designating Party or a court order secured after appropriate notice to all
 19 interested persons, a Party may not file in the public record in this action any
 20 Protected Material. A Party that seeks to file under seal any Protected Material
 21 must comply with Civil Local Rule 79-5.

22 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing
 23 by the Producing Party, within sixty days after the final termination of this action,
 24 each Receiving Party must return all Protected Material to the Producing Party. As
 25 used in this subdivision, “all Protected Material” includes all copies, abstracts,
 26 compilations, summaries or any other form of reproducing or capturing any of the
 27 Protected Material. With permission in writing from the Designating Party, the
 28 Receiving Party may destroy some or all of the Protected Material instead of

1 returning it. Whether the Protected Material is returned or destroyed, the Receiving
2 Party must submit a written certification to the Producing Party (and, if not the
3 same person or entity, to the Designating Party) by the sixty day deadline that
4 identifies (by category, where appropriate) all the Protected Material that was
5 returned or destroyed and that affirms that the Receiving Party has not retained any
6 copies, abstracts, compilations, summaries or other forms of reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel
8 are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
9 legal memoranda, correspondence or attorney work product, even if such materials
10 contain Protected Material. Any such archival copies that contain or constitute
11 Protected Material remain subject to this Protective Order as set forth in Section 4
12 (DURATION), above.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: August 28, 2008

Randolph T. Moore

Randolph T. Moore
Attorneys for Plaintiff

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5 DATED: _____

Thomas J. Gundlach
Attorneys for Defendant

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8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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10 DATED: _____

Hon. Maxine M. Chesney
United States District Judge

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Snell & Wilmer

LLP
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: August 28, 2008

Randolph T. Moore

Randolph T. Moore
Attorneys for Plaintiff

4
5 DATED: 8-28-08

Thomas J. Gundlach

Thomas J. Gundlach
Attorneys for Defendant

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8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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10 DATED: August 29, 2008

Maxine M. Chesney

Hon. Maxine M. Chesney
United States District Judge

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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective
 Order that was issued by the United States District Court for the Northern District
 of California on _____ in the case of Plaintiff Cesar U. Moreno
 Castellanos, a/k/a Cesar Moreno vs. Defendant Louisville Ladder Inc., Case No. C
 08-02009 BZ. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Stipulated Protective Order to any person or entity except in
 strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Northern District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

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Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

9031529

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